

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8451 of 1992
with
CIVIL APPLICATION No 395 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SAMSUDDIN DULABHAI LUHAR, SINCE DECEASED THROUGH HIS HEIRS

Versus

STATE OF GUJARAT & ANR

Appearance:

MR AJ SHASTRI for Petitioners
Ms. Talati, AGP for Respondent No. 1 & 2
NOTICE SERVED for Respondent No. 3, 4
MS. BRAHMBHATT for Respondent No.5

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/02/98

ORAL JUDGEMENT

This petition is directed against the notice dated 5th November, 1992, issued by the City Survey Superintendent, Talod, calling upon the petitioners to remove unauthorised construction made on land bearing City Survey No.2440 situated at Village Talod, of Prantij Taluka.

2. Mr. Shastri, the learned advocate appearing for the petitioners has contended that the land and the super structure comprising of two shops were purchased by him and the shed constructed by predecessor in title have already been removed. He has further submitted that the shops belonging to him are not unauthorised structures and the impugned notice, therefore, is bad and illegal. He has further contended that the petitioners have not been given an opportunity of hearing and, therefore, also the impugned notice is bad and illegal. He submitted that the land belongs to the Talod Nagar Panchayat it is the District Development Officer who is the competent authority to make order in respect of the land and the construction made thereon. The impugned notice has been issued by the City Survey Superintendent. The notice is therefore issued without the authority of law and requires to be quashed and set aside. In support of his contention, he has relied upon the communication dated 21st April, 1990 (Annexure "E" to the petition) and of 25th August, 1992 (Annexure "H" to the petition). Mr. Shastri has also contended that under Resolution No.927 of the Executive Committee of the Panchayat passed on 27th October, 1989, the unauthorised construction occupied by the petitioners have been regularised. The petitioners have also paid the penalty as ordered by the panchayat. He has relied upon the judgments in the matter of Khoda Dhor Panjara Pole Sanstha, Radhanpur and Another Vs. The State of Gujarat, (1984 G.L.H. 970) and of The State of Bombay Vs. Fakir Umar Dhanse [(AIR 1961 Supreme Court 722 (V 48 C 112)].

3. Learned Advocate Ms. Brahmabhatt appeared for the respondent No.5. She has submitted that the respondent No.5 who is adversely affected on account of this unauthorised construction and he, therefore, raised an objection against the said construction. Respondent No.5 has made an affidavit and has set out detailed facts in respect of various proceedings that have been taken by the petitioners herein and has submitted that the construction raised by the predecessors in title of the petitioners was unauthorised and the same was ordered to be removed sometime in the year 1980. Since the year 1980, the petitioners have been protected in course of one or the other proceedings and thus have continued in occupation of the unauthorised construction. She has submitted that the petitioners have failed before the trial Court, the first Appellate Court and the Second Appellate Court i.e. the High Court. The petitioners have also failed before the respondents authority. She has submitted that the construction which has been raised

in violation of the building requirements and the Ribbon Development Rules cannot be regularised by resolution passed by the Nagar Panchayat. Further, in respect of the very construction, the suit instituted by the petitioners being Civil Suit No.134 of 1990 and Civil Suit No.135 of 1990 are still pending. The factum of the said suits has not been disclosed by the petitioners in this petition. The petition, therefore, deserves to be dismissed for suppression of material facts also.

4. It appears that the shops in occupation of the petitioners have been raised by their predecessor in title without the authority of law and that he failed to prove before the Competent Authority, that the construction was made in accordance with law. However, \ he was ordered to remove unauthorised construction in the year 1980, what has sought to be done under the impugned notice is the implementation of the order made in the year 1980. I am, therefore, of the view that the petitioners were not required to be heard before the issuance of the impugned notice. The judgment in the matter of Khoda Dhor Panjrapole (supra) therefore, shall have no applicability on the facts of the present case. Further, the petitioners have failed to establish that the land belongs to the Panchayat and that the District Development Officer was the competent authority to issue the notice of demolition. The reliance placed on the communication dated 21st April, 1990 and 25th August, 1992 is misplaced. Under the said communication dated 21st April, 1990, the Collector has informed the District Development Officer that the District Development Officer is the competent authority to order demolition of unauthorised construction belonging to the petitioners. Under communication dated 25th August, 1992, the Collector has informed the petitioners that the question of regularization of unauthorised construction is within the domain of the District Development Officer. The question of competence of an officer to make an order cannot be decided on the basis of such communications. In fact the District Development Officer has, under his communication dated 12th February, 1990, informed the Collector that it is the Collector who is the competent authority to order demolition. Besides the contention that the land belongs to Panchayat is not substantiated. I am, therefore, of the opinion that Mr. Shastri has failed to establish that impugned notice has been issued without the authority of law. It is also not proved that the Executive Committee of the panchayat had power to regularise unauthorised construction. In the matter of Fakir Umar Dhanse (Supra) the Supreme Court was considering the meaning of the words "Eviction" and

"Vacation". Court held that, "For the purpose of vacation, it is necessary that any unauthorised construction put up must also be removed otherwise there can not be any vacation of the land." This judgment, in my view, does not lend support to the case of the petitioners in any manner.

5. Mr. Shastri has contended that the petitioners have been in occupation of the shops in question for nearly 20 years and that they have been earning the livelihood by carrying their profession of carpentry and blacksmithy in the said shops. It is, therefore, in the interest of justice, that the construction of the said shops be regularised and the respondents authority be directed to regularise the construction of the said shops. I am afraid, I cannot accept this contention either. The construction which is unlawful and which is made in violation of the relevant provisions of law cannot be regularised by an executive order.

6. In view of the above discussion, I do not find any merit in either of the contentions raised by Mr. Shastri. No other contention is raised before me. Petition is therefore dismissed. Rule is discharged. Interim relief is vacated. The petitioners shall pay cost of this petition to respondent No.2 which is quantified at Rs.1,000/-. Petitioners shall also pay cost to the respondent No.5 which is quantified at Rs.1,500/-. Mr. Shastri submitted that the petitioners would like to challenge this order in appeal and the operation of this order be stayed for a period of 15 days. Request is granted. This order shall become operative on and from 16th March, 1998.

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